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OFFICE OF PETITIONS

In re Application of

Atkins, et al

Application No. 10/784,137

Filing Date: 20 February, 2004

Attorney Docket No. FORRE 67592

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DECISION ON PETITION

This is a decision on the petition filed on 6 December, 2004, and resubmitted via FAX on 3 February, 2005, and considered under 37 C.F.R. §1.53, to obtain a filing date of 20 February, 2004, for the application.

The petition is **GRANTED**.

BACKGROUND

This nonprovisional application was deposited on 20 February, 2004.

On 30 September, 2004, the Office of Initial Patent Examination (OIPE) mailed a "Notice of Incomplete Nonprovisional Application" (the 30 September Notice) stating, *inter alia*, that no filing date had been assigned because the application was deposited without drawings, and requiring drawings be filed if necessary.

The 30 September Notice informed Petitioner of three alternative responses to the Notice: (a) to contend that the materials had been submitted, providing evidence thereof and a copy of the

materials; (b) to submit the omitted materials and accept the date of submission as the date of the application; or (c) to demonstrate that drawings were not necessary for an understanding of the subject matter claimed.

In the 6 December, 2004 (and 3 February, 2005), filing (over a 30 November, 2004, certificate of mailing), Petitioner submitted, *inter alia*, twelve (12) sheets of drawings (Figs. 1 - 19) as described in the specification along with a copy of the receipt card.

ANALYSIS

A review of the record reveals that:

- the instant application was deposited with the Office on 20 February, 2004; and
- the receipt card (see: MPEP §503¹) is date stamped ("02/20/04") and provides, *inter alia*:

¹ MPEP §503 provides in pertinent part:
§503 Application Number and Filing Receipt

* * *

A return postcard should be attached to *each* patent application for which a receipt is desired. It is important that the return postcard itemize all of the components of the application. If the postcard does not itemize each of the components of the application, it will not serve as evidence that any component which was not itemized was received by the United States Patent and Trademark Office (USPTO). It should be recognized that the identification of an application by application number does not necessarily signify that the USPTO has accepted the application as complete (37 C.F.R. §1.53(a)).

* * *

RETURN POSTCARD

If a receipt of any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

The identifying data on the postcard should be so complete as to clearly identify the item for which receipt is requested. For example, the postcard should identify the applicant's name, application number (if known), confirmation number (if known), filing date, interference number, title of the invention, etc. The postcard should also identify the type of paper being filed, e.g., new application, affidavit, amendment, notice of appeal, appeal brief, drawings, fees, motions, supplemental oath or declaration, petition, etc., and the number of pages being submitted. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard, e.g., the number of pages of specification (including written description, claims and abstract), number of claims, number of sheets of drawings, number of pages of oath/declaration, number of pages of cover sheet (provisional application).

The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard. For example, merely listing on the postcard "a complete application" or "patent application" will not serve as a proper receipt for each of the required components of an application (e.g., specification (including claims), drawings (if necessary), oath or declaration and the application filing fee) or missing portions (e.g., pages, sheets of drawings) of an application if one of the components or portion of a component is found to be missing by the USPTO. Each separate component should be specifically and properly itemized on the postcard. Furthermore, merely incorporating by reference in the postcard receipt, the items listed in a transmittal letter will not serve as *prima facie* evidence of receipt of those items.

The person receiving the item(s) in the USPTO will check the listing on the postcard against the item(s) being filed to be sure they are properly identified and that all the items listed on the postcard are presently being submitted to the USPTO. If any of the items listed on the postcard are not being submitted to the USPTO, those items will be crossed off and the post-card initialed by the person receiving the items. Upon return of a postcard receipt from the USPTO, the postcard receipt should be promptly reviewed by the person who filed the items to ensure that every item specifically denoted on the postcard was received by the USPTO. If the postcard receipt has been annotated to indicate that a particular item denoted on the postcard was not received by the USPTO, the postcard receipt will not serve as *prima facie* evidence of receipt of that item in the USPTO. (Emphasis supplied.)

* * *

1. Utility Patent Application Transmittal (PTO/SB/05)
2. Specification (26 sheets)
3. Claims (5 sheets)
4. Abstract (1 sheet)
5. Drawings (12 sheets)

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The record further discloses that:

- the 12 sheets of drawings submitted with the petition contain Figs 1 - 19—with the pages numbered as “1/12” through “12/12”—as described in the specification; and
- as indicated above, the receipt card date stamped by the Office acknowledges receipt of 12 sheets of drawings.

Because the return postcard receipt properly itemizes the contents of the application package in accordance with MPEP §503, the Office concludes that the 12 sheets of drawings Figs. 1 - 19 as described in the specification was submitted on 20 February, 2004, and subsequently was misplaced in the Office.

Accordingly, the petition under 37 C.F.R. §1.53 is granted; the petition fee is waived (and apparently was not charged); and the Notice mailed on 30 September, 2004, hereby is withdrawn as to the 12 sheet of drawings Figs. 1 - 19 as described in the specification of the application.

This application is released to the Office of Initial Patent Examination for further processing with a filing date of 20 February, 2004, for the entire application and in particular for the 12 sheets of drawings Figs. 1 - 19 as described in the specification using:

- **pages 1 - 32 (Specification, Claims, Abstract) deposited on 20 February, 2004; and**
- **the 12 sheets of drawings Figs. 1 - 19 as described in the specification deposited on 6 December, 2004;**
- **with direction to OIPE to correct Office records to reflect that 32 pages of specification (description, claims and abstract) and 12 sheets of drawings were present on filing on 20 February, 2004, and forward to Petitioner a corrected filing receipt setting forth a filing date of 20 February, 2004, reflecting therein that 32 pages of specification (description, claims and abstract) and 12 sheets of drawings were present on filing.**

Thereafter, the application will be considered by the examiner in due course.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3214.

A handwritten signature in black ink, appearing to read "John J. Gillon, Jr.", with a stylized flourish at the end.

John J. Gillon, Jr.
Senior Attorney
Office of Petitions